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COMMITTEE AGAINST TORTURE

Eighteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 296th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 May 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.296/Add.1.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Special report of Israel (CAT/C/33/Add.2/Rev.1) (continued)

1. At the invitation of the Chairman, Mr. Lamdan, Ms. Arad, Mr. Nitzan, Ms. Ronen and Mrs. Rimon (Israel) resumed places at the Committee table.

2. Mr. LAMDAN (Israel) said that the answers that the members of the delegation would provide to the Committee's many questions would not be as comprehensive as they would have liked owing to the lack of time.

3. Ms. ARAD (Israel) said that she categorically denied the allegations that the Israeli authorities used torture during the interrogation of detainees. Israel was a State based on the rule of law and as such prohibited the use of torture and any other act that was likely to cause severe pain or suffering in any circumstances. Any official or person who was found to have used torture would be punished. It was an incorrect assumption that, as long as Israel had not incorporated the Convention into its domestic legislation, its provisions were not binding.

4. The Landau Commission had defined the boundaries of what was permitted to the interrogator but, more specifically, what was prohibited to him. A moderate degree of pressure, including physical pressure, was permitted only in extreme circumstances. A defence of "necessity", which was part of Israel's criminal law, was never a justification of torture or other cruel, inhuman or degrading treatment or punishment.

5. The recommendations the Committee had made when Israel had submitted its initial report (CAT/C/16/Add.4) would be dealt with when it submitted its second periodic report.

6. Mr. NITZAN (Israel) said that interrogation guidelines in Israel were kept secret because their disclosure would allow terrorist organizations to prepare their members for questioning and thus deprive the Israeli authorities of their last weapon in the war against terrorism. Allegations of torture and force were part of the propaganda war being waged against Israel or were made by people who feared reprisals for disclosing information during questioning. There was an enormous difference between the claims made and the real situation.

7. Mr. Kafishah had petitioned the Supreme Court during his detention, requesting that an interim injunction should be issued to stop what he had claimed were illegal methods of interrogation from being used. The Supreme Court had dealt promptly with the case. Mr. Kafishah was a leading member of a terrorist group which had been responsible, inter alia, for a suicide bombing in Tel Aviv that had left three people dead and 50 injured. The authorities had had grounds for believing that another bomb was hidden somewhere, and that was why Mr. Kafishah had been questioned and why it had

been so essential to obtain the information the authorities had needed. The details surrounding the case had been kept secret to prevent the bomb from being removed.

8. Methods such as placing a prisoner next to an air conditioning unit, forbidding him to use the bathroom or depriving him of food were illegal, even in the most extreme cases such as that of Mr. Kafishah, and any interrogator who used such measures would be punished. The allegation that Mr. Kafishah had been deprived of sleep for 36 hours might be true. That was not torture and there were, of course, limits on how long a person could be kept awake. There had been an overriding need to find out where the second bomb had been hidden.

9. In the case of Abed al-Samed Harizat, it had been found that there was no connection between his death and the way in which he had been treated by his interrogator, who had therefore not been charged with a criminal offence. However, it had been found that the interrogator had acted inappropriately and he had been promptly suspended from his job and reprimanded.

10. Other interrogators who had acted inappropriately had the guidelines for the General Security Service (GSS) set by the Landau Commission and had been disciplined. Those who had hit prisoners had been thrown out of the GSS and had faced criminal proceedings. The investigators who had been trying to find out where weapons and explosives were located had gone too far in the methods they had used. There had been no justification for their actions. They had been tried and sentenced to six months in prison. They had appealed to the Supreme Court, which had upheld the sentence.

11. In the case of Muhammed Abdel Aziz Hamdan, an interim injunction against the use of physical pressure had been issued. However, the injunction had later been cancelled at the request of the GSS. The court had agreed to cancel it for two reasons - and those reasons were taken into account in any decision to cancel an injunction. The first was that the methods the GSS had wanted to use did not amount to torture or any other form of cruel, inhuman or degrading treatment or punishment. The second was that a defence of "necessity" prevailed. Interim injunctions provided for a judicial review of a prisoner's conditions and were effective in protecting his rights.

12. In reply to a question by Mr. Burns, he said that the GSS would not use methods which constituted torture under article 1 of the Convention. The European Court of Human Rights, when asked to examine interrogation methods used by the police of Northern Ireland against IRA members, had ruled that, so long as ill-treatment was not severe, it did not constitute torture. Article 1 of the Convention did not state that any act by which pain or suffering was intentionally inflicted constituted torture; the pain and suffering must be "severe". Moreover, Mr. Landau, the head of the Commission which had authorized the use of moderate physical pressure, had been intimately familiar with international human rights instruments and had concluded that physical pressure which did not come under articles 1 and 16 of the Convention did not constitute torture.

13. Mr. Burns had asked why the Committee should believe that Israeli interrogators would stop short of torture in their attempts to prevent

terrorism. The Landau Commission could have decided to leave the choice of methods up to individual interrogators, simply calling for prosecution after the fact of those who resorted to torture. Instead, the Commission had decided to set guidelines in order not to permit, but to prohibit, torture. Interrogators received instruction on those guidelines, and on the provisions of the Convention, from the Ministry of Justice and the GSS and were told that they would be imprisoned if they exceeded them.

14. He maintained that Israel did, in fact, observe the provisions of article 2, paragraph 2, of the Convention. He agreed with Mr. Yakovlev that the answer to terrorism was not torture; the answer was clever interrogation and the methods used by the GSS in extreme cases did not constitute torture under article 16 of the Convention.

15. Mr. Burns had pointed out that non-governmental organizations had reported the systematic use of methods designed to cause pain and suffering. However, the Israeli Government claimed that they were not designed to cause "severe" pain or suffering. As professors of international law, Mr. Burns and Mrs. Iliopoulos-Strangas should understand that argument.

16. For security reasons, he could not describe the methods used by the GSS. However, he was prepared to discuss the allegations made in the Kafishah case, where the victim claimed to have been handcuffed, hooded and subjected to loud music, sleep deprivation and shaking.

17. Detainees were handcuffed while outside their cells in order to prevent them from harming others. It was not true that prisoners were handcuffed in painful positions; it must be remembered that some of the statements made by prisoners under interrogation were untrue and were intended to discredit the Israeli State.

18. The primary reason for covering the heads of prisoners was to prevent them from identifying other detainees where that might hinder an interrogation. The Supreme Court had ruled that, provided that such hoods did not impede the wearer's breathing, they did not constitute torture. Some detainees had claimed to have been forced to wear dirty or suffocating hoods. Those practices were forbidden. Prisoners were never hooded in their cells.

19. It was true that loud music was played in interrogation areas. Israeli interrogation facilities were limited and it was sometimes necessary for two detainees to sit next to one another. The music was intended to prevent communication and was heard by everyone in the room, including the interrogators. It therefore did not constitute torture or cruel, inhuman or degrading treatment.

20. The Supreme Court had considered the question of sleep deprivation, which was not intended to cause suffering; owing to the urgent need to obtain information, interrogations were extended over long periods of time.

21. In reply to Mr. Burns' question about the number of complaints of torture received by the special department of the Ministry of Justice

responsible for investigating such complaints and the action taken in that regard, he said that he did not have the exact statistics, but thought that approximately 70 complaints had been received from individuals, lawyers, NGOs and the International Committee of the Red Cross (ICRC) in 1996. All of them had been, or were currently being, investigated. The Ministry of Justice usually found that there had been no infringement of the guidelines set by the Landau Commission and the authors of the complaints were so informed. Cases where such complaints went unanswered were the result of a bureaucratic error. In cases where interrogators were found to have engaged in inappropriate behaviour, disciplinary or, in extreme cases, criminal action was taken.

22. With regard to the question whether doctors were present at interrogations, he said that, because of the sensitivity of the issue, it had recently been decided that doctors would be available on a 24-hour basis at interrogation facilities. Any detainee who required medical care was treated on site by a doctor or paramedic and, in the rare cases where it was necessary, was sent to a hospital. Prisoners under interrogation received medical check-ups, but doctors were not part of the interrogation staff.

23. In reply to the question on incommunicado detention, he said that, as a general rule, anyone in custody was entitled to see a lawyer immediately after arrest. For reasons of national security, however, an order could be issued prohibiting a detainee from consulting a lawyer for a limited period, usually five days. Detainees or their lawyers had a right to request the Supreme Court to rescind such orders; such petitions were usually dealt with within one or two days. Detainees were also entitled to meet with a representative of the ICRC within 14 days of arrest.

24. Mr. Burns had asked whether the Special Ministerial Committee's decision of 1994, authorizing the GSS to use enhanced physical pressure in interrogating detainees, did not constitute authorization to inflict a higher level of pain. In fact, the Ministerial Committee had never authorized interrogators to exceed the Landau Commission's guidelines; moreover, NGOs had not reported any escalation in interrogation methods since the 1994 decision.

25. Replying to Mr. Sorensen's question, he explained that there were provisions for the supervision and review of GSS interrogation proceedings. Three years previously, a department of the Ministry of Justice had been established in order to supervise the GSS and to receive and investigate complaints. That department worked under the direct supervision of the State Attorney. All GSS interrogation facilities were inspected by officials of the Ministry of Justice, who were entitled to view any documents, including interrogation reports, and to take disciplinary proceedings if the Landau guidelines had been breached.

26. Ms. ARAD (Israel), replying to Mr. Sorensen's comment on section 277 of the Penal Code, said that that section, as amended, included a definition of torture which corresponded to that of the Convention.

27. Mr. NITZAN (Israel) noted that Mr. Sorensen had mentioned the unfortunate case of Abed al-Samed Harizat, who had died under interrogation in 1995, and had read out portions of the report written

by Dr. Robert Kirschner, a forensic pathologist who had been present at the autopsy. As in the Kafishah case, it was important to consider the background. The interrogation had been an extremely urgent one, since the individual in question had been a member of Hamas and had had knowledge of the whereabouts of his associates, whom the GSS hoped to prevent from killing another in a series of victims. The prisoner had indeed been shaken, one of the methods permitted under the Landau Commission guidelines and, according to Dr. Kirschner, that shaking had resulted in his death.

28. The death in question should never have occurred; there had been many other complaints of shaking by Israeli interrogators, but there had been no other fatalities. Shaken baby syndrome was a result of the fact that infants' skulls had not yet closed and, in any case, rarely resulted in death. There was no other recorded case of a person dying as a result of having been shaken on a roller coaster, in a car accident or under interrogation. Shaking did not kill or injure people.

29. He doubted whether many countries would have allowed a foreign expert chosen by the family of a person who had died under interrogation to be present at the autopsy. Because Dr. Kirschner was not a neurologist, moreover, an Israeli specialist in that field, who had had no connection with the Government, had been asked to give an opinion and had stated that the death was due not to shaking, but to a rare complication of pneumonia.

30. As the Israeli authorities were concerned to ensure that the Harizat case would not be repeated, they had included some safeguards in the guidelines. For example, the "shaking" method could not be used in future without obtaining permission from a high-ranking GSS officer. The Association for Civil Rights in Israel had petitioned the Supreme Court to prohibit "shaking" and the case was currently pending. He was convinced that, if the Supreme Court found that the method was tantamount to torture or to cruel, inhuman or degrading treatment, it would impose a ban.

31. The General Security Service had provided the Court with extensive evidence, including the various medical reports. It had also informed the Court that, in the wake of the Harizat case, the Ministerial Committee on GSS affairs had included safeguards in the guidelines to limit any danger to the person under interrogation. Investigators were not entitled to use "shaking" as a routine method of interrogation, but only in exceptional circumstances when the legal defence of necessity came into play. Interrogators were required in each case to consider the degree of anticipated danger to the population, the urgency of obtaining information and whether there were alternative ways of averting the danger. The state of health of the person under investigation must also be taken into account.

32. The methods of investigation used by the GSS had been effective in revealing the hiding place of a bomb in the Kafishah case and in uncovering very important information in other cases that had prevented terrorist acts.

33. Ms. ARAD (Israel) said that Supreme Court judges were outstanding jurists appointed by a special committee made up of two members of the Knesset, two ministers, two representatives of the Bar Association and

three Supreme Court judges. They were appointed solely on the basis of professional criteria and served until the age of 70. They interpreted the law and the Constitution and their judgements were binding on all lower courts.

34. Mr. NITZAN (Israel) said that Israeli judges were highly aware of their responsibilities and the Israeli Supreme Court was prepared to examine petitions even during the course of investigations. In cases where interim injunctions had not been cancelled, the GSS was obliged to abide by the Supreme Court's decision. In the Hamdan and Belbaysi cases, the judges had not taken a final position because the urgent procedure demanded an immediate ruling and more time was required to deal with the questions of principle relating to the defence of necessity and its scope.

35. He agreed that article 277 of the Israeli Penal Code prohibited the use of violence against persons under interrogation. However, the defence of necessity could be legitimately invoked in cases of the alleged violation of that article. For the same reason, the cancellation of an interim injunction did not place the GSS above the law, since the Supreme Court had accepted the defence of necessity in such cases.

36. Mr. Pikis had asked whether confessions obtained during interrogation were admissible as evidence. According to the rules of evidence, confessions were admissible only if made freely by the defendant. Where criminal charges were filed against terrorists, the onus was on the State to prove the validity of evidence allegedly obtained against the will of the defendant. Some confessions had been rejected on those grounds. Moreover, the main aim of the GSS was to foil terrorist acts and not to obtain confessions.

37. The guidelines of the Landau Commission had not been approved by the Israeli Knesset and did not have the status of law. They had, however, been approved by the Israeli Government and were binding on GSS investigators.

38. Mr. ZUPANCIC said he took it that the Israeli position rested on two points. The first was that the interrogation methods used did not amount either to torture or to cruel, inhuman or degrading treatment. The second was that, whatever the methods used, they were justified when it came to balancing values against necessity, since there was no absolute value that could not be outbalanced by the argument of necessity.

39. Mr. NITZAN (Israel) said that, although the defence of necessity was based on the principle that there was no single value that overrode all other values, the Landau Commission had prohibited torture in cases involving the defence of necessity and the Government had endorsed that prohibition.

40. Mrs. ILIOPOULOS-STRANGAS asked who was responsible for determining what degree of physical pressure was "moderate".

41. The Committee was well aware of Israel's problems with terrorism, which were unfortunately shared by a large number of States. However, as the sole authority competent to determine whether certain procedures were tantamount to torture or to cruel, inhuman or degrading treatment within the meaning of

articles 1 and 16 of the Convention, the Committee was concerned about the institutionalization by the Landau Commission of methods that seemed to fall under those headings. The Israeli delegation had stressed that pain or suffering must be "severe" to qualify as torture under article 1, but that argument certainly did not apply to article 16.

42. Mr. SORENSEN said he was surprised to hear that "shaking" was not a routine method of interrogation, since the late Israeli Prime Minister Yitzhak Rabin had estimated the number of cases in which it had been used at 8,000. Did the delegation consider that "shaking", which it had compared to whiplash, did not produce severe, but only moderate pain? Was that interrogation method used intentionally and for a specific purpose and was the GSS a public authority? Did the delegation consider that moderate physical pressure could not produce severe pain? It was well known that even moderate pressure on the testes produced severe pain.

43. Mr. PIKIS said that the reply he had received regarding the legal basis of the decision in the Hamdan case had been incorrect. The Court's decision had not been based on the defence of necessity. It referred to the interim injunction only and took no final position on the validity of the defence of necessity and its scope. Moreover, the Court had not been given any information on the methods of interrogation to be used and had taken no stand on them. He wondered whether the Court had taken any account of article 277 of the Penal Code, which prohibited oppression by public servants.

44. How was the Committee expected to make a reasoned judgement on the methods of interrogation used when the State party was not prepared to reveal its practices?

45. The delegation had acknowledged that, in one case, an individual had been deprived of sleep for 36 hours. According to NGO reports, the period of deprivation could extend for up to 11 days. Was he right in concluding that a person being interrogated could be denied sleep until his will had been broken and he had begun to provide information?

46. Was the Harizat case perceived as an instance of torture? Had his family been awarded compensation or was such compensation contemplated?

47. What measures were used to determine the degree of pain and suffering inflicted? Did the reactions of an individual under interrogation matter? Was any allowance made for the fact that the threshold of pain was lower for some than for others?

48. Mr. NITZAN (Israel), replying to the questions on how to decide whether physical pressure was "reasonable" or not and whether a given act inflicted "severe" pain or suffering, said that it was the United Nations, in its Convention against Torture, which used the word "severe" in its definition of torture; that was not Israel's definition. He wondered how the drafters of the Convention had imagined that anyone could decide whether pain was "severe" or not. The answer was a fundamental question in law and judges were appointed to conduct a judicial review for that purpose.

49. The answer to the question whether "a little" pressure on the testicles constituted "moderate physical pressure" was a matter of interpretation in a particular case, with its particular circumstances. In his view, even a little pressure on the testicles definitely exceeded "moderate" pressure and was therefore totally prohibited.

50. The United Nations could not empower international judges to implement the articles of the Convention in Israel; it was up to the country's judges to decide whether there had been cruel, inhuman or degrading treatment in a particular case. In the Hamdan case, where the procedure had required quick action, the Court had not wanted to state whether the defence of necessity was relevant to the case or not. It was nonetheless convinced that, if it had to decide immediately during the interim injunction procedure, it preferred the position of the State to that of the petitioner.

51. As to whether the Harizat family would receive compensation, every person in Israel who claimed that he had been treated unlawfully and injured had the right to appeal for compensation. There were 20 to 30 such claims now before the courts, filed by families or individuals who were claiming compensation. The Harizat family had not appealed, making compensation impossible. If it did appeal, however, and, if the Court found there were grounds for its claim, it would be compensated, as had happened with the families of other injured persons.

52. He could not comment on the accuracy of the press report citing Prime Minister Rabin's estimate of the number of people who had been subjected to shaking. After Mr. Harizat's death, there had been much greater restrictions on the use of shaking and it was now used only rarely. Of course, the Government agreed that it was not the result, but the act, that constituted torture. As to why Israel claimed the Harizat case was not one of torture under the Convention, he had not said that shaking was similar to whiplash. There were no medical reports of the individual's death from whiplash, but the Government did claim that, when shaking was used, it did not cause severe pain or suffering. Furthermore, it was done by authorized persons and it was not inflicted intentionally to cause pain or suffering. Israel did not view that treatment as torture, although it was aware of the unfortunate results. His country tried to follow the Convention. It did not maintain that everything was perfect: some interrogators were indeed too eager, but then they were sent to prison. Israel rejected cruel treatment.

53. Ms. ARAD (Israel) said that her Government held the Committee in the highest regard and it was important to convince the members of the Committee that the methods of interrogation under discussion did not constitute torture. Israel considered the Convention to be very important; it was in keeping with Israeli law and legal concepts of respecting human life and dignity without forgetting that the right to life was no less important than the individual's right to dignity.

54. Mr. LAMDAN (Israel), stressing that Israel faced dreadful moral dilemmas and issues of enormous human significance, said that it tried to strike a balance between respect for domestic and international law and respect for the humanity of people who had no respect for humanity and the duty of every Government to protect the lives of its own citizens.

55. The Israeli system was generous, democratic and therefore open to scrutiny. Its checks and balances were also open to the scrutiny of the world press and subject to public and parliamentary debate. The Government tried hard to stay within the limits and requirements of the law, but its main purpose must be to prevent further loss of life and to protect the lives of its citizens.

56. The CHAIRMAN said that it was because the Committee was aware of Israel's moral dilemma that it had wished to hold a dialogue.

The public part of the meeting rose at 5.40 p.m.